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Mr. Anthony Housefather

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● (1530)

[*English*]

The Chair (Mr. Anthony Housefather (Mount Royal, Lib.)): Good afternoon, everyone.

It's a pleasure to welcome everyone to this meeting of the Standing Committee on Justice and Human Rights as we commence our study of Bill C-375, An Act to amend the Criminal Code (presentence report).

It is also a pleasure to welcome Mr. Majid Jowhari, the sponsor of the bill.

Welcome, Mr. Jowhari.

Mr. Majid Jowhari (Richmond Hill, Lib.): Thank you, Mr. Chair. It's good to be here.

The Chair: It's also a pleasure to welcome Mr. MacGregor back to the committee.

Mr. Alistair MacGregor (Cowichan—Malahat—Langford, NDP): Hello folks.

The Chair: Welcome.

On behalf of everyone on the committee, Mr. Ehsassi, we want to extend our deepest condolences to the people of your riding and all of Toronto on the incredible loss they suffered the other day from the brutal killings in your riding.

Mr. Jowhari, you are the first person to speak about the proposed bill. You have approximately 10 minutes to tell us why we should all jump and support it. The floor is yours.

Mr. Majid Jowhari: Thank you, Mr. Chair.

At the outset, let me also echo the sentiments expressed by the chair to Mr. Ehsassi regarding the unfortunate situation that happened in Willowdale. All of our thoughts and prayers are with the ones who lost their lives and those in the process of recovery. We commend the great work of our first responders, and also of Mr. Ehsassi, who went to the riding to be there for the people.

On that note, good afternoon, members and colleagues. It is a privilege to be here before this committee today.

Let me start by saying that one in five Canadians will directly face a mental health issue at some point in their life. Four out of five will indirectly be impacted. The economic impact of mental health-related issues is estimated at $50 billion a year, and it continues to rise. While there are vulnerable populations across Canada, mental illness will affect all Canadians regardless of age, sex, or background. Accordingly, there is an overwhelming desire for real change across a broad range of stakeholders.

This bill reflects what I've heard on the ground in my constituency, testimony from various groups championing mental health, such as the CMHC, CMHA, and CMHI, and my own research and expertise as chair of the mental health caucus. I also considered the testimonies of front-line workers, research organizations, and most importantly our experience on our visit to the Ray of Hope youth facility and the Grand Valley Institution for Women last year.

As highlighted earlier, this also reflects the priority of my constituents in Richmond Hill, who have, since I took office, often shared their concerns regarding the dynamics between the criminal justice system and mental health.

In Canada, 10% of the population reports symptoms consistent with mental illness. Among our youth, 25% will experience a mental health issue as they navigate through their adulthood, particularly in the vulnerable transition period between ages 18 and 24. This vulnerable population is profoundly overrepresented in our prison system, and studies have shown that the majority of young inmates demonstrate a mental health issue.

According to the Mental Health Commission of Canada, only a fraction—20% of youth—have access to the mental health services they need. We must be very clear on that fact. Mental health services are as much needed as any necessary medical services. To be forced to go without them is to invite life-altering consequences.

The correctional investigator's 2012 annual report found that 36% of offenders at federal penitentiaries were identified as requiring psychiatric or psychological follow-up. Forty percent of male inmates and 69% of female inmates were treated for mental health issues while in prison.

Bill C-375 would amend paragraph 721(3)(a) of the Criminal Code, mandating that unless otherwise specified, when a pre-sentence report is required by a court, in addition to information such as age, maturity, character, behaviour, attitude, and willingness to make amends, information outlining any mental health disorder, as well as any mental health care program available to the accused, be provided as part of the pre-sentencing report.

As Bill C-375 passed through the House, a range of opinions were expressed on the bill as it currently stands. Arguments were made questioning the need for such a bill, and in contrast that the bill does not go far enough. I'm happy to have this opportunity to discuss those concerns, and I'm intrigued to see what amendments may be proposed.

Today, there exists no mandate for the court to consider the mental health history of an individual in pre-sentencing proceedings, yet the court is mandated to take into account such nebulous and subjective factors as attitude or character. As Bill C-375 ensures that pertinent information will be taken into account during pre-sentencing, an individual with a history of mental health issues will be afforded the appropriate care and treatment during the administration of justice and their rehabilitation.

In the long term, the legislation presents an opportunity for us to take a real step forward, decrease recidivism, improve rehabilitation, and further erode the stigmatization of mental illness. In the short term, there are immediate benefits to the quality of life in our prisons, as well as to the efficacy of the services in the administration of justice and the rehabilitation of vulnerable populations.

● (1535)

In any individual sentence, our justice system is well-served by being made fully aware of relevant mental health concerns. With mental health information included in a pre-sentence report, the interplay of mental health with the condition of incarceration can be taken fully into account. Readily available mental health information is invaluable when considering a step as drastic as solitary confinement or choosing the facility that can best provide the appropriate mental health services.

By ensuring that mental health concerns are considered in these decisions, we can reduce the strain on penitentiary security officers while creating an environment that mitigates inflammatory factors and encourages conditions that reduce recidivism in the long term. This can be particularly useful in crafting cases of conditional sentencing as well as in creating conditions for effective reintegration following release.

Ensuring that mental health information is available at every step of the process will also make cases less vulnerable to attack on appeal, saving time and money for our judicial system and providing a net benefit to the overall cost and burden associated with mental health issues. Many members of Parliament do not have a chance to see their private members' bills seen before the House, let alone passed to committee. I'm proud of the bill that you have before you today, but it's decidedly a product of compromise. A private member's bill is one of the most direct venues through which a member of Parliament can direct real change on behalf of their constituents, and this private member's bill is a tool to further the discussion on this topic.

While I wish the scope and the reach of this bill was more encompassing, I believe that this balancing act has produced a bill that will do tangible good in the lives of Canadians while attracting common sense support on all sides. Likewise, I'm excited to work with the committee to re-examine and potentially strengthen the bill through amendments, and I believe the legislation as it stands is a strong model that will facilitate a fruitful discussion.

To conclude, I would like to remind the committee that the nexus of mental health care in our criminal justice system is complex, dynamic, and evolving. A judge must be presented with the relevant information in any given case in order to take advantage of this. This complex situation should be addressed by more than a single private member's bill, and I certainly would not frame Bill C-375 as a be-all solution.

I thank you for the opportunity. I would like to also acknowledge the work of Mr. Glenn Bradbury, who was instrumental in getting the bill to this state.

Mr. Chair, colleagues, I'm ready to answer questions from the committee.

Thank you very much.

The Chair: Thank you very much, Mr. Jowhari.

We're going to start with Mr. Nicholson.

Hon. Rob Nicholson (Niagara Falls, CPC): Thank you very much, Mr. Jowhari, and thank you for introducing this bill. Thank you as well for your comments that you're prepared to look at amendments that might strengthen or clarify the bill. Certainly we appreciate that.

I'm pleased to see, and we're all grateful for the fact, that you're focusing on the whole area of mental health. We've come a long way in this area, even within the criminal justice system. When I was a kid, they used to tell me the last thing someone would ever want to do was plead guilty by reason of mental problems, because then you would be detained, basically, for the rest of your life. They used to say it was at the pleasure of the lieutenant-governor. So that was completely avoided, but nonetheless, we've come a long way since then.

Now, one of the issues that the present Minister of Justice has raised and set out on a number of occasions is that she wants to expedite the process, to move the justice system so that it's not clogged up and so that delays won't result in people having their charges stayed.

Pre-sentence reports are very common in our criminal justice system, and, as you pointed out, some of them contain facts about the age, the background, and the criminal records of the individuals. According to your analysis, will adding this new requirement for a pre-sentence report on mental health slow down the justice system as it is right now?

● (1540)

Mr. Majid Jowhari: Let me start by saying that in most cases, the court system is already taking into account the mental health of the accused being sentenced, so this bill is just codifying an already-existing process.

As to the concept of overburdening the court or adding to the length of the process, we have not seen that in the discussions and in our studies. We are just codifying an existing practice, and making sure it's standard.

Hon. Rob Nicholson: However, this doesn't exist in all pre-sentence reports. All of them do not come with a mental analysis of these things. It's when it's called upon, or where it's obvious to the court. But this would require it in every case, every single pre-sentence report, so that certainly would increase the number of....

Mr. Majid Jowhari: Yes, one could argue that it would increase, but a majority of the pre-sentence reports and a majority of the judges already request that type of information, as I said. It's basically codifying it.

Hon. Rob Nicholson: I believe there will be an increased call upon mental health professionals, experts, and doctors, and everybody else. Do you think the provinces are prepared to step up to the plate here and provide this?

Mr. Majid Jowhari: Those requests are already there to a large extent. As we went through the different correctional services, we realized that this need that is being highlighted during the incarceration is being communicated to the provinces. Therefore, the provinces could potentially be looking at it—but really, that's a jurisdictional issue. All we are trying to do in this bill is make sure that two things happen: one, as I said, is that the mental health-related information of the person to be sentenced be included; and two, that the programs needed to make sure that individual gets the services needed to be able to successfully reintegrate back into the community are considered and made available.

Hon. Rob Nicholson: Let me just be hypothetical. In the documentation we've been given, there's a listing of a number of the types of mental disorders. They include agoraphobia, anorexia, bipolar disorder, pathological gambling, panic disorder, phobias, post-traumatic stress disorder, drug and alcohol abuse, to name just a few.

Could you anticipate the fact that no matter what the report looks like, it may not include all aspects of mental illnesses, and this certainly would be a ground for appeal? If, in fact, the pre-sentence report was there, and it didn't include some area of mental illness because perhaps the doctors, the professionals, didn't scour every possibility, we could see that as part of the court of appeal proceedings. The individual could have had some other mental illness that wasn't taken into consideration. This would now be a requirement.

● (1545)

Mr. Majid Jowhari: Yes. The mental health field is evolving. We are finding new methods and new tools to deal with mental health, and new conditions are also being identified. That's why the text of the bill has been left open to allow consideration of those new conditions as they are identified, and also to identify different approaches.

Ten years ago a simple approach might have been just prescribing a medication. Now we see there are different cognitive and therapeutical approaches that might help to resolve the situation.

As I said, again, the focus is to make sure that the language of the bill is broad enough to be encompassing, and to allow for the evolving science in mental health and the new, innovative ways that those services are being provided.

Hon. Rob Nicholson: Thank you, Mr. Chair.

The Chair: Thank you very much, Mr. Nicholson.

Mr. Fraser.

Mr. Colin Fraser (West Nova, Lib.): Thank you very much, Mr. Jowhari. Thanks so much for bringing this important bill forward, and for appearing at our committee and helping us understand it a little better. I know the good work you have done on mental health issues in your time as a member of Parliament, and I commend you for that. It's an important issue, and I think everyone around here notices the good work you have done in that regard.

Section 718 of the Criminal Code includes sentencing principles. Of course, to denounce an offence, or to deter other people from committing that offence is important. One of them, though, under paragraph 718(d), is to help rehabilitate the offender and make sure they get the help they need so they are not as likely to commit another offence, thereby protecting society in the future.

Do you think your bill will help rehabilitate offenders?

Mr. Majid Jowhari: I believe my bill will go a long way in making sure that the programs are made available. I think the person who is incarcerated and going through his or her sentencing period should be awarded the opportunity to go to those programs. The intent of those programs is to deal with and stabilize the mental health of that individual.

I believe that through this process we would be able to make sure that the rate of reoccurrence is reduced. The way it's done is by making sure that the condition is dealt with. Also, we provide an environment for the individual to be able to reintegrate effectively back into the community, so it would reduce the chance of recurrence.

Mr. Colin Fraser: Very good.

I know from my experience in practising criminal law in Nova Scotia that taking into account mental disorders was almost always a practice in a pre-sentence report. I would say that, in many ways, this is really just standardizing good practice to ensure that the court has a complete picture of the circumstances of the offender who is before the court at sentencing.

Would you agree with that, and do you think it's important to ensure that probation officers are directed to turn their minds to any mental disorder that might exist in order to give the court the complete picture on sentencing?

Mr. Majid Jowhari: Yes, and thank you for highlighting that, based on your experience.

As we were doing our study, we heard consistently as well that in most cases, the pre-sentencing reports contain information about the mental health status of the individual. However, what was missing and not consistent and not standardized was that the programs needed to ensure that the individual gets the needed support were not there, or consideration was not given to where he or she needed to get assigned to be able to receive those services. As we were visiting some of the penitentiaries, we realized that, for those services, they needed to bring external psychiatrists or psychologists, yet in others, there were in-house services provided, because the facility also provided those types of services.

If you take a step back, we're actually standardizing or codifying an existing process, in most of the cases, and also amending or strengthening it by making sure that those programs and services are also provided with a clear focus on helping an individual to reintegrate back into society very effectively.

● (1550)

Mr. Colin Fraser: Usually the accused person or the defence is okay with, or actually requests, that such a pre-sentence report be done so that it can give the court a complete picture of the circumstances of the accused on sentencing. Sometimes that's not the case, though, and the court can order a pre-sentence report on its own, or the crown can ask for it over the objection of the defence.

If, for example, an accused person were not wanting information to be known to the court, for whatever reason, and the mental disorder information were only obtainable by that person consenting, is there a problem with the confidentiality of that information when it becomes known to the court? If so, is there any way we can remedy that problem?

Mr. Majid Jowhari: To the best of my knowledge and the research that we've done, it is not mandatory right now for the person who is being sentenced to disclose if he or she does not wish us to do so. Therefore, I would say that the probation officer or the person who is preparing the pre-sentencing report could do his or her best to make sure that the information is gathered and those programs are made available.

I think that's a prudent thing to do, because if a person is hiding a serious condition or is not comfortable with sharing that serious condition, when he or she is going through their incarceration, there may be cases where mental health will become an issue, and then they have to go back and really consider it.

Mr. Colin Fraser: But there would be no obligation, obviously, on the accused to consent to this information being provided?

Mr. Majid Jowhari: Absolutely not. There is no obligation for the accused to consent.

Mr. Colin Fraser: Thank you so much, Mr. Jowhari.

Mr. Majid Jowhari: No problem.

Thank you.

The Chair: Mr. MacGregor, go ahead.

Mr. Alistair MacGregor: I am just following up on the two lines of questioning. I think Mr. Nicholson was sort of going down the vein of how the requirement or the addition of this may increase workloads and so on. In previous studies on the state of our justice system, I think we've all realized that there's not a simple fix to this. It has many facets. It involves bringing in more judges and also devoting a lot of resources to the court system.

In the process of coming forward with this bill—and I know you're quite passionate about it and that you have done a lot of consultation—did you consider that the administration of justice is the responsibility of our provincial governments? Have you gotten any feedback officially from provincial governments on what this might do to their administrative burden and so on?

Mr. Majid Jowhari: Specifically on going and getting feedback from the provinces, the answer is no. We consider sentencing to be one piece and looked at the judicial process as a whole. Then we looked at the person moving through our system to the point at which he or she is rehabilitated and integrated back into the community.

We believe that if the system is taxed initially as a result of gathering the extra information and doing extra consulting, this in turn will help in the long term by reducing repeat offences, providing much more effective integration into the community and reducing the number of appeals that could happen.

Overall, I believe that the cost and impact on our system will be reduced, although we may have to make sure that we strengthen certain pieces to ensure that the overall cost, the overall length, and the overall benefit are a lot more—

Mr. Alistair MacGregor: Yes, so you may have those up-front costs initially, but if the other employees in the justice system—the probation officers, the sheriffs, the correctional officers themselves—know that someone is suffering from a certain type of disorder, they can have those individual levels of care, and ultimately the system—

Mr. Majid Jowhari: Absolutely. If an individual is suffering from a mental health problem, such as depression or anxiety, and then, due to circumstances, that person gets put into solitary confinement, studies have shown that it may lead to suicide or conflict with officers. This in itself will cause more costs, and it will put a lot more of a burden on the system to be able to handle this. Again, having those provisions available and making sure that all levels during this process have an understanding of the individual's situation and things that need to be considered would, in the long term and overall, not only save money but also improve the person's ability to reintegrate.

Remember, the whole goal is to bring a balance between someone who has committed a wrongdoing and needs to be sentenced and, let's say, punished for that, and making sure that we provide an environment for them to be able to effectively reintegrate back into the community, because we don't want them to re-offend.

● (1555)

Mr. Alistair MacGregor: Yes, I think all too often we forget that it is the correctional service. We're trying to correct the behaviour because they are not going to be staying in the institution indefinitely, and we want to make sure that when they are released they have a reintegration that works well.

When you were working with the drafters, was there discussion or debate on the terms "mental disorder" or "mental illness"? Will that have legal repercussions when it's interpreted?

Mr. Majid Jowhari: It's actually quite astute of you to highlight that. Yes, we went back and forth trying to come up with the right terminology, and in my speech, I did intentionally switch back and forth between "mental illnesses" and "mental health issues". Again, this is a discussion that I'm sure the committee will have, and you're going to hear from other experts. I'm hoping that you'll also hear from the department in relation to the right terminology.

The intent of the bill is not to play with the terminology. At the end of the day, I'll be very happy whether you use "mental health illness", "mental health issues", or "mental health challenges", so long as we provide an opportunity for the individual to really get the programs and services they need to help them reintegrate and recover much faster—that is, as long as that accommodation is made. That's really the purpose.

The Chair: Thank you very much.

Mr. McKinnon.

Mr. Ron McKinnon (Coquitlam—Port Coquitlam, Lib.): Thanks, Chair, and thank you, Mr. Jowhari for your bill.

I guess I'm going to follow along on all these lines of questions because they're good questions.

I'm interested in the problem that probation officers will have in determining whether a mental health condition or mental disorder exists, and how to find that out. I don't know if a particular accused might present in an obvious way that he or she is having difficulties. I guess I'm asking how the probation officer will know whether or not to include mental health information and therapy.

Mr. Majid Jowhari: That was a question we also probed. As I indicated, we need to remember that our studies and discussions have shown that in a majority of the cases, either the accused or the court or the judge asks for inclusion in the report the mental health status or mental illness-related issues of the person.

Our goal with this bill is not to identify or prescribe how or where the probation officer should go to collect that information. It's based on the job they're already doing and also jurisdiction. The bill is focused on making sure that we codify a practice that is already in place. In those cases where the probation officer may need training or may need to look into it, I am sure that consideration can be made by the provinces or the court system to handling it.

Mr. Ron McKinnon: As you've said, there's nothing in here that says how they're going to get this information, but by requiring that it be provided, it imposes an onus on the probation officer, I believe, to find it.

What tools does a probation officer have to know what the problems might be? If the accused is not interested or willing to come forward with information, I'm not sure how the probation officer will know about it. If he or she knows about it, what action can they take to get this information he is now required to give?

● (1600)

Mr. Majid Jowhari: From my point of view, I need to look at whether there is a legal standing or not.

I would repeat that with the current process, probation officers are already identifying these and have an existing process they go through to identify and seek input from qualified individuals. I don't think the intent of this bill is to specifically say to whom people are to go to or what training or programs they need to be able to have taken to be qualified to seek the mental health status of an individual.

The individual, as part of the whole system, could be trained or could seek support. However, that is my personal point of view.

Mr. Ron McKinnon: Would it open a decision to appeal if the information about the accused's mental health was not in the pre-sentencing report, but it was found later that it should have been and that the sentence might have been different otherwise?

Mr. Majid Jowhari: I would focus on the fact that there is a strong case for appeal when the condition is identified, and when the person who is serving the sentence wishes to go back and table an appeal. As far as the impact on the sentencing is concerned, that is not within the scope of this bill. I believe our judges are quite capable of taking them into account, and they would be able to make that decision.

Mr. Ron McKinnon: I'm coming at this as a non-lawyer. I don't know how all of this works.

Mr. Majid Jowhari: I'm not a lawyer either, so don't worry.

Mr. Ron McKinnon: Okay, we're in good company then.

It seems to me that when you make it a requirement require that this be in the report and it's not in the report and a sentence is rendered based on whatever the report contains, this could open a whole new avenue of appeal.

Mr. Majid Jowhari: Unless otherwise specified as being incorporated into the bill, as well as what I've said, it's not mandatory for the person who's accused and is about to be sentenced to voluntarily give that information. It puts the obligation for identifying any mental health or mental illness issues back on the probation officer who is preparing this, to make sure the judge takes all of that into consideration.

Mr. Ron McKinnon: It does put the onus on the probation officer, but we don't necessarily have any tools for the probation officer to use to get that information or to drill into the case to find out whether or not it's relevant.

Mr. Majid Jowhari: I go back again to the fact that I mentioned. Our review of this highlighted that a lot of probation officers and judges are already asking that question, so this is simply codifying or standardizing it.

Mr. Ron McKinnon: Thank you.

The Chair: Now we'll go to some shorter questions, so shorter answers, please, and shorter questions.

Mr. Cooper.

Mr. Michael Cooper (St. Albert—Edmonton, CPC): Thank you, Mr. Jowhari.

I have a couple of quick questions. I'll ask them all, and then you can answer all at once.

First, with respect to Mr. MacGregor's question about the wording of "mental disorder" and "mental illness", it wasn't quite clear to me from your answer whether there was any significance between why you ultimately chose "mental disorder" over "mental illness". If you could clarify that, it would be appreciated.

Second, is it always relevant in every case? You say that judges order a report and that the report includes the mental health or mental well-being of the individual who's convicted, but when there is absolutely no evidence that there is a mental health issue, a judge would likely exercise discretion and not order that to be included. I know that your party often talks about leaving it to the discretion of judges to make decisions. Why would we take away that discretion here?

● (1605)

Mr. Majid Jowhari: Thank you for your question on mental illness and mental disorder. In general discussions, everyone—laymen and people like me—would all use the term "mental illness". When it comes to amending a code, especially in the Criminal Code and the criminal justice system, we were advised that if we go with "mental disorder", it would broaden the definition of "mental illness" and allow for flexibility as new cases are identified. These would still fit under the terminology of "mental disorder" as it relates.... As I said, this is still under "unless otherwise specified". If the judge determines that there is no relevance, I would say that the probation officer must have looked at this and said that mental health issues or mental disorder are not relevant to this case and, as such, there is no need for services to be provided.

However, most of the indications that we have seen as a result of the studies are that a lot of individuals, especially young individuals between 18 to 24, who end up in the system actually do demonstrate mental illness or mental disorder issues.

Thank you.

The Chair: Mr. Jowhari, I have a follow-up to Mr. Cooper's question. Would you have any objection if we added language into the proposed bill saying, "that is relevant for sentencing purposes", meaning that the obligation is only when the mental condition or the mental disorder is relevant for sentencing?

Mr. Majid Jowhari: As I said, I'm open to making any amendments or suggestions that further clarify or strengthen the bill. If the committee feels that the inclusion of that wording would strengthen the bill, clarify some of the questions that may be there, and help the court system to be more effective and help the individuals recover, I'm all for it.

The Chair: I have another follow-up to the other question Mr. Cooper asked. Can you explain to me the difference between a mental disorder and a mental condition? Is "mental condition" broader than a "mental disorder", which in turn is broader than a "mental illness"?

Mr. Majid Jowhari: This is a much broader discussion to be able to answer.

Mental illness, in my opinion, is when a case has been identified and you're actively working on dealing with it, such as anxiety or depression. With "mental disorders", it is broader. There might be cases that might transition into mental illness.

I forgot the second part of your question.

The Chair: I asked about mental health "condition" versus "disorder" versus "illness". Which is the broadest, and which is the narrowest?

Mr. Majid Jowhari: Your mental health condition could be healthy, or you might be suffering from or are in the early stages of being identified with a mental health disorder, or in late stages of dealing with a mental illness. That's the way I internalize it. That's the way I thought of it.

The Chair: Thank you.

Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chairman.

Mr. Jowhari, thank you for being here. It's an important issue you've brought forward. Like Mr. Fraser, I've been in the courtrooms a couple days, and one of the things that almost always, not always but almost always, a judge will ask for is a pre-sentence report.

What I'm curious about is that you frequently mention a study. Is there a study that you could produce for the committee to review?

Mr. Majid Jowhari: Absolutely. We'll pass that study to the chair and to the clerk for the members to look at.

● (1610)

Mr. Dave MacKenzie: Thank you.

Mr. Majid Jowhari: No problem.

The Chair: Thank you very much. That was a good question.

Mr. Majid Jowhari: I just want to add one more thing. As you know, we are asking for subjective elements such as character, behaviour, intent, and all those things to be considered. We've mandated those to be considered in the pre-sentence report. To me, there's no difference between the mental health status of an individual and their intent, behaviour, or character that could help the judge make the right decision.

Mr. Dave MacKenzie: Thank you for that.

The Chair: Are there any other questions? If not, I have one more question.

I'm actually looking at the bill and I want to get your comments on some wording. You mentioned that they have to provide "any mental health care programs" relevant to the offender. Can you explain to me what is a "mental health care program", and would there be any mental health treatments that would be different from a mental health care program?

Mr. Majid Jowhari: Again, in the discussion alternated between "treatment" and "program", and we settled back on "program". As I said, this bill is the product of a lot of compromises and a lot of interchanges and legal feedback. We felt that "program" encompasses and actually increases the scope of the different treatments that might be available.

A treatment could be medication, a treatment could be receiving a prescription, or a treatment could be participating in group therapy. That's why we moved from "treatment" into "program", because it broadens it.

Mental health is still an evolving science, and the different programs are evolving. That's why we went from "treatment" to "program", to make sure that it becomes a lot more encompassing.

The Chair: I would have thought the reverse, that "program" was much less encompassing than "treatment", which can involve many things outside a fixed program. However, I guess we'll all talk about wording if we move forward.

I didn't see any other questions, so we're going to move to our next panel.

Mr. Jowhari, thank you so much for appearing before us, and thank you for bringing forward this important bill to remind us of the importance of mental health issues that Canadians face in the criminal justice system.

Mr. Majid Jowhari: Thank you. I appreciate the opportunity.

The Chair: We need to briefly recess while we set the next witness up on video conference.

● (1615)

The Chair: We are now reconvening.

We are joined by the Canadian Mental Health Association, represented by Dr. Patrick Smith, the National Chief Executive Officer, who is joining us from Toronto.

Welcome, Dr. Smith. You have the committee before you, even if you can't see all of us. You have eight to 10 minutes to deliver your statement to us and then we'll ask you questions.

Dr. Patrick Smith (National Chief Executive Officer, Canadian Mental Health Association): That's great. Thank you, Mr. Chairman.

Good afternoon, members of the committee.

Thank you for inviting us here today. My name is Dr. Patrick Smith. I'm the National CEO of the Canadian Mental Health Association. Bill C-375 is a very important bill to us. I would definitely have been there in person if today weren't April 26, 2018. Today marks 100 years to the day when, in 1918, Dr. Clarence Hincks came together with other prominent Canadians in the historic Château Laurier, just around the corner from you, to form what is now the Canadian Mental Health Association. Today we are a Canada-wide organization with divisions in every province. We provide services to more than 1.3 million Canadians in over 330 communities across Canada.

We are celebrating this important milestone today in Toronto with some of Dr. Hincks' immediate family, in honour of his vision and commitment to two very clear goals: to end stigma and discrimination, and to provide more humane care for people with mental illness. In many ways—100 years later, to the day—this discussion on Bill C-375 is about addressing these same issues.

Today, I'd like to focus on some of the ways in which mental illness, including addiction, intersects with our criminal justice system, as well as on key areas that we believe will help to ensure that Canadians with mental health problems are supported in their treatment and in their recovery.

Specifically, I will be speaking in favour of passing Bill C-375, because we know that it will confer significant benefits onto many Canadians who are marginalized and living with mental illness and substance use problems. We're also confident that the bill will lessen the burden on our criminal justice system.

We talk about the current shortfalls.... As many of you are aware, in the 1970s, the deinstitutionalization of mental health services transferred mental health service delivery from psychiatric facilities to more local communities, resulting in the closure of psychiatric hospitals across Canada. This shift has been heralded as a positive step in respecting the rights, dignity, and self-determination of people with mental illness.

However, the psychiatric deinstitutionalization has been replaced by a new form of institutionalization: the Canadian prison system. Given that mental health supports at the community level are often underfunded and poorly integrated, many people with mental illness and in need of treatment fall through the cracks and end up in the criminal justice system. You now know, through the debates over the last few years, that Canada has invested a lower percentage of its total health care budget in mental health care than any G7 country. Basic primary mental health care provided by addiction counsellors, psychologists, social workers, and specialized peer support workers form the bedrock and the foundation of other G7 countries' response to the mental health needs of their populations. They're not covered in Canada's universal health care system. Thoughtful, targeted investments in treatments that are effective and save money have been replaced by the high burden of costs of untreated mental illness that we see in jails and prisons. These unnecessary costs are carried by every Canadian.

The Office of the Correctional Investigator estimates that at least one in four admissions to federal correctional institutions present with a mental illness, and many of these also have a concurrent substance use disorder. This number is highly disproportionate to the number of people with mental illness in the population at large.

Despite the high number of people with mental illness in Canadian correctional facilities, Canada's prisons are not equipped with enough staff, resources, and funding for mental health supports for people who are incarcerated. As a result, Canadians with mental illness who end up in the correctional facilities do not receive the treatment that they need to facilitate their recovery and rehabilitation. In fact, the absence of treatment for many inmates can result in violent confrontations with other inmates and staff, as well as additional charges and time spent in segregation, which typically exacerbate mental health problems.

Once out of prison, Canadians with mental illness are more likely to experience homelessness and to have difficulty reintegrating into the community. Many do not have the necessary wraparound supports, and subsequently end up cycling through the criminal justice system at high cost. They often face discrimination and stigma as a result of having been incarcerated, and have difficulty finding meaningful employment. That's unjust, especially because people with mental illness who enter the criminal justice system are far more likely to have committed minor criminal offences when compared to offenders who don't have a mental illness. The majority of arrests are for minor crimes, such as causing a disturbance, mischief, minor theft, and failure to appear in court, which may be directly or indirectly related to the mental illness or substance use itself.

● (1620)

As a community-based organization with a long history of supporting people with mental illness and addictions at the local level, CMHA knows from experience that providing the necessary supports and care for people can greatly change the course of their lives, the course of the lives of their families, and their communities.

An ideal health care system—and here I'm not even talking about the ideal, but even one that's based on smart investments in treatments that work—can actually save many people and can save money. People with mental illness would have easy and timely access to well-funded, integrated community-based services, including housing and employment supports and individual and family supports, in addition to accessing a range of professionals, including family physicians.

This continuum of services allows individuals to receive support in the community and to thrive in recovery. In Canada we don't have to take a leap of faith on this. When you're a pioneer, you often have to go out on a limb and see how it works. On this front, we're not pioneers; we're laggards.

We can learn from other G7 countries that have been in our situation and have made the smart investments in health responses to mental illness, and dramatically reduce the high cost of untreated mental illness. When community-based services are well coordinated, they can also positively impact people with mental illness who come into contact with the law. Although the research on court support and diversion programs is limited, these measures that divert people with mental illness, pre- or post-charge, have been shown to increase access to mental health services, improve mental health functioning, and reduce hospitalization and recidivism, again saving money. They also relieve some of the pressure on the criminal justice system.

Supporting people at the community level is also much less expensive than incarcerating them. In Canada it costs over $100,000 per year to house and support a male federal inmate and $180,000 a year for every female inmate. Offenders who are supervised in the community, on the other hand, cost considerably less, about one-eighth of those amounts. The funding that would be spent on the incarceration of people with mental illness would be better spent on proactive investment in treatment and social integration.

This brings me to Bill C-375. This bill proposes to amend the Criminal Code to introduce information about mental health issues and disorders in pre-sentence reports. The goal of the bill, as I understand it, is to make the criminal justice system aware of and more responsive to individuals with mental health issues and to ensure that they receive the appropriate treatment and supports that they need throughout their rehabilitation.

Although some jurisdictions already collect information on mental health in pre-service reports, this bill would create a national standard for all jurisdictions to consider mental health during sentencing. It is important that you don't have to win the postal code lottery to know that you live in a province that just so happens to provide and seek your mental health information. That's good for you, but what about the ones who don't? We really are applauding this bill to ensure there is a national standard.

This is important because research conducted by Public Safety Canada suggests that pre-sentencing reports make a difference in sentencing outcomes. They've been shown to increase the likelihood that offenders will receive a community sentence rather than a custodial sentence. We believe that with the right supports, community sentences can better facilitate recovery for people with mental illness.

In conclusion, we believe that the Government of Canada needs to continue showing leadership by addressing the current gaps experienced by people with mental illness and addictions in our criminal justice system. We strongly support the government's efforts to conduct a comprehensive review of the criminal justice system, and one of its stated goals, which is to determine how services can be improved for offenders who suffer from mental illness.

Bill C-375 presents an important opportunity to achieve this goal and ensure that people with mental illness and substance use problems are treated with care and compassion. It is also an opportunity to break the vicious cycle of institutionalization that unfairly impacts people with mental illness and substance use problems.

● (1625)

We also encourage the government to continue to make smart investments in early health responses to mental illness, which not only save lives but also lower the high cost of untreated mental illness in our communities. As such, we strongly urge the government to support Bill C-375.

Thank you again for inviting me here today. I'd be happy to answer any of your questions.

The Chair: Thank you very much, Dr. Smith. On behalf of all of the members of the committee and all three parties, I want to wish you and the Canadian Mental Health Association a very happy 100th birthday. I'm sure you must be celebrating, doing something in Toronto today. Please pass on all of our best wishes on this very important milestone.

Now we'll move to questions. Mr. Nicholson.

Hon. Rob Nicholson: Thank you very much. I extend my congratulations as well, Doctor. [*Technical difficulty*] The Canadian Mental Health Association deserves the thanks of all Canadians for the work that you have done.

We're dealing with this particular private member's bill and we have to make sure that it works on all different aspects. You said early in your remarks, and you came back to this point later, that you were confident that there would be less of a burden on the criminal justice system.

The Chair: He doesn't look like he's hearing your remarks. It's the video-conferencing system.

Hon. Rob Nicholson: Can you hear me, Doctor?

Dr. Patrick Smith: I hear you now. I now have audio.

Hon. Rob Nicholson: Good.

Thank you, Doctor. That's important in these hearings.

You said you were confident that there would be less of a burden on the criminal justice system if we pass this bill requiring mental health analysis to be a part of every pre-sentence report. It may be less of a burden in the long term when dealing with people, but it seems to me that it would increase the level of work and the resources necessary to be able to produce these reports. While this may be a worthwhile increase in the burden, it seems to me that it would be more of a burden on the criminal justice system to determine this in every case. There may be good reasons for it, but in your opinion you believe that overall this would be less of a burden. I wonder if you could perhaps explain that a little bit more.

Dr. Patrick Smith: Yes. I've worked as a forensic psychologist throughout part of my career, and I know that probation officers and others spend a lot of time putting these pre-sentence reports together. It's just about having standards of what they bring into that. It's not a lot of extra work, if I'm doing the report, to make sure that I'm including that pertinent information. It's more a matter of making sure that they, in all pre-sentence reports, know it's something they need to cover. Often, a probation officer is already going to know all the information that's there to put in; it's just a matter of actually conveying that information.

I don't think it's a lot of additional investigative work on their part. If they're a probation officer for a client, they often know about their mental health challenges. All we're asking with this bill, as I understand it, is to make sure that it's consistently brought forward.

If there is a slight amount of increased activity that would be involved in that, I think the evidence is pretty clear in other jurisdictions, and in the jurisdictions within Canada where it is part of the work, that it pays dividends. That ounce of prevention is worth a pound of cure, especially because, in my understanding, it's not a huge additional burden on these people, but an approach to how they write the pre-sentencing report.

● (1630)

Hon. Rob Nicholson: Okay, that's fair enough. Thank you.

My colleague Mr. Cooper has a question on this as well.

The Chair: Absolutely.

Mr. Cooper.

Mr. Michael Cooper: Thank you, Mr. Chair. Thank you to the witness.

First of all, you would agree that mental health is an evolving area. We're learning more every day about mental health. Would you agree?

Dr. Patrick Smith: That's correct, yes.

Mr. Michael Cooper: You would agree with that.

You would agree that there's some debate about what constitutes a disorder or a mental health illness. You'd agree with that? And there's disagreement as we learn more as this area evolves. Would you agree?

The Chair: When you're nodding, sir, it doesn't—

Mr. Michael Cooper: I just need you to respond orally, yes or no.

Dr. Patrick Smith: Absolutely, yes. There's a bit of a gap in what you're saying, and that's why. Yes, I get it.

Mr. Michael Cooper: You would agree.

Dr. Patrick Smith: That there is variability, yes.

Mr. Michael Cooper: But at the same time, you're saying that this could be done very easily when we're talking in this bill about "any mental health disorder". Explain why it would be so simple in that context, given that there's disagreement, that it's evolving, and that probation officers may have very little information before them about the history of the individual, how this would be so easy. I would question, how is it even doable?

Dr. Patrick Smith: In my experience, it's more likely that they have the information. I've been in the field for a number of years, and the nuances about what we call "mental illness" or "mental disorder" have been here for the last 20 to 30 years. However, it doesn't change the way we work on the ground. My understanding is that probation officers often do have that information. We're not talking about their becoming specialized diagnosticians. But if it's a standard that they're at least supposed to include this information in the scope of their own ability, they often have that information. You can just look at different jurisdictions' practices. For example, as I understand, in B.C. and Nova Scotia where it's much more of a practice, I don't think it's an extra burden; it's just a mindset of, if they have the information they're going to share it in this report. Again, my understanding is that 95% of judges who were surveyed said this is extremely helpful in their sentencing.

If we had a robust mental health system and you were convinced that someone who was coming on probation did not have his or her mental health needs met in the correctional system, I think you would have greater confidence that people weren't accidentally getting diverted into the criminal justice system as a result of their mental illness. But because they are, it's highly important to make sure that's tracked and measured, because you don't want it to be cluttering up, if you will, the criminal justice system.

Mr. Michael Cooper: But in every case, even though there might not be one shred of evidence that there's a mental health issue with the individual...?

Dr. Patrick Smith: It would very simply not be applicable. The probation officer would say if it's not an applicable field. We're just asking them to—

Mr. Michael Cooper: How do you know if it's applicable or not unless you undertake some sort of assessment of the individual?

Dr. Patrick Smith: Because this isn't a new practice, my understanding of jurisdictions where they do it is that it's based on the evidence available. The probation officers already have to make those decisions every day when they're writing pre-sentence reports about what is pertinent information. All you're saying is that you are to include anything you know about mental illness for this individual, and if the individual has no mental illness, it's not applicable. It's not difficult.

● (1635)

The Chair: Thanks very much.

Ms. Khalid.

Ms. Iqra Khalid (Mississauga—Erin Mills, Lib.): Thank you, doctor, for your testimony today.

I want to start by continuing along the line of questioning of my colleague Mr. Cooper. How do you verify whether somebody has a mental illness or not when you include it in that pre-sentence report? Would there be, and is there currently, some kind of relationship between an inmate's physician who would keep these medical records and the probation officer? Are there not some issues of privacy and breach of confidence of that doctor-patient privilege in sharing that information? How would that impact these pre-sentencing reports?

Dr. Patrick Smith: My understanding is that if it's at pre-sentencing, they haven't met with a physician within the correctional facility yet. These pre-sentencing reports would be based on information the probation officers have, and the diagnosis or the background information they have could come from hospitalization, from their own physician, or from a community-based program. Any information they would have available would already be part of the chart, and this is just passing it on to the people who are making sentencing decisions so they can make informed decisions. If we don't have good information, we can't make well-informed decisions.

Ms. Iqra Khalid: Right, and I want to talk a bit on a broader basis. In our committee here, we've talked about access to justice. We've learned about the disproportional numbers of indigenous people in penitentiaries and prisons. How would this bill impact those marginalized communities? Would they benefit? If so, how?

Dr. Patrick Smith: I think it's our understanding that it would positively impact marginalized communities more than anyone else, because I think they are also disproportionately experiencing many negative outcomes because of social and health inequities. For example, in B.C., while only 3.4% of the population is indigenous, over 10% of the overdoses from opiates are in that community. I think being able to ensure a standard across Canada would say that we're going to be including this important information.

It's especially important in Canada. Because of a lack of mental health services, we probably have more people showing up in jails and prisons and for sentencing due to mental health challenges, and they're disproportionately from marginalized communities. Understanding that there might have been some other issues going on that were related to the disturbance of the peace—or whatever they're being charged with—could give the people making the sentencing decisions the information to help them triage it into something that's much more effective, much less costly, and much less of a burden on not only the criminal justice system but also Canadian citizens.

Ms. Iqra Khalid: Thank you.

Those are all of the questions I have, Chair.

The Chair: Mr. MacGregor.

Mr. Alistair MacGregor: Hello, Dr. Smith. Thank you for appearing before the committee today.

I was listening to your opening remarks, and I think what you alluded to, and what we've already heard through testimony and debate on this particular bill, is that correctional facilities are not very well designed for those with mental health disorders.

Dr. Patrick Smith: Yes.

Mr. Alistair MacGregor: Also, I think we can agree that providing a judge with as much information as possible is always a good thing. These are the people who are intimately acquainted with the offender, the crime they've committed, and the circumstances. To arm a judge with a report on the mental health status of an offender is a good thing.

However, I think there's another part that we're missing here. It may be all well and good to provide the judge with that information in a pre-sentence report, but are you confident that if the judge is then armed with that information we now have the resources in our community that would allow the judge to make a decision? Or will this judge still only have a correctional facility to use?

● (1640)

Dr. Patrick Smith: Well, that's a very, very good point, and I think that's the point we're making when we talk about our historic investment of about 7.2% of our health care budget in comparison to others that are doing 13% and 14%. It's a good question.

The judge at least has the option. We know from some of the early data around diversion programs, such as mental health court and drug courts, that it can have a huge impact for individuals but also significant cost savings for Canadians.

I echo what you're saying. Even with the investment of $5 billion over 10 years that the federal government has pledged for mental health, and even with the focus on trying to put as much of that as possible in the community, we're still playing catch-up to putting the basic services and supports in place. While it will be difficult for that judge to find those services, it's still a better place, most often, than a correctional facility.

We can do the math like they did in the U.K. They realized that you will have the money to invest in mental health services, because they talk about having closed down certain jail units and stuff that used to just house people with mental illness because there wasn't a better place for them. It's a very expensive and non-effective alternative.

Mr. Alistair MacGregor: You may have alluded to this in some of your exchanges, so forgive me if I'm asking the question again, but we did ask Mr. Jowhari, when he was drafting the bill, about the use of the term "mental disorder".

You've seen the text of the bill. It's not a very large bill. Given the expertise your organization has in this regard, are you okay with that term or is this something that we need to be cognizant of, potentially, when we're looking at amendments to the language?

Dr. Patrick Smith: Absolutely. One of the things our field is great at is debating language. We debate what we think about the words "mental disorder". It come from a DSM diagnostic category that physicians are taught, which is to put things into a disorder—substance use disorder, depressive disorder—yet people in my own organization at the Canadian Mental Health Association sometimes bristle when they hear "mental disorder".

I think the intent of talking about mental disorder is the scientific intent, connected to the diagnostic categories from the diagnostic and statistics manual. There's a debate about mental illness, mental health problems, and mental disorder.

I did hear a little bit of the interchange with Mr. Jowhari. I guess how I would say it is that there are Canadians who are vulnerable to mental health problems and who have not expressed those problems, but they may have greater risk. Then there are people with mild to moderate problems that may not meet the diagnostic criteria for a disorder. Then there are people with disorder. Mental illness and mental disorder, in the professional [*Technical difficulty—Editor*], but not everyone has a mental disorder or a mental illness.

So the diagnostic distinction between "mental illness" and "mental disorder" doesn't exist in the scientific community. People have different affinities with one term over another, but they're considered the same thing.

Mr. Alistair MacGregor: Thank you, Dr. Smith.

Thank you, Mr. Chair.

The Chair: I have a couple of technical questions, following on from Mr. MacGregor, in terms of trying to get the right language for the bill. You may have heard, then, my conversation with Mr. Jowhari related to mental health programs and mental health treatment opportunities. He was saying that the word "programs" was more expansive, when I would have thought that "treatment" opportunities was more expansive.

What is your thought, Dr. Smith?

Dr. Patrick Smith: I enjoyed hearing that conversation, because I kind of understood where you were coming from.

Again, we have the same debates. The word "treatment" in the field of mental health has historically been equated to beds, especially with substance use disorder: "Oh, to go to treatment, go to your 28-day program." They tried to expand it.

I don't think "program" is the right word in terminology in terms of expanding it. I think what we talk about is "full system of services and supports". It's the most expansive. Sometimes those services and supports are in the form of a program, and sometimes people's understanding of treatment always goes to the most acute treatment, thinking "beds".

I think the intent of this bill, from what I understand, is to encapsulate the full continuum of services and supports that are meant to be the primary mental health response. That can include services from your GP, a specialized peer support worker, or an addiction counsellor, all the way through to more formal programs and more acute treatment.

● (1645)

The Chair: Thank you. That's very helpful.

My second question comes back to the exact conversation you were having with Mr. MacGregor.

Currently the wording that's being proposed is "any mental disorder from which the offender suffers". Let's say I were to introduce the words "any aspect of the offender's mental condition that is relevant for sentencing purposes".

Would you prefer one over the other?

Dr. Patrick Smith: I would probably prefer the latter.

Instead of "mental condition" even, we would say "mental health condition", or—

The Chair: So "the offender's mental health condition".

Dr. Patrick Smith: I think because "disorder" is such a charged word, even though I grew up in the medical world and understand that it comes from the diagnostic manual [*Technical difficulty—Editor*], others aren't.

The Chair: Thank you. Those are my technical questions.

Does anyone else have any other questions? No.

Dr. Smith, you were incredibly helpful to the committee. I want to thank you very much for your testimony.

Once again, a very happy 100th birthday to the organization.

Dr. Patrick Smith: Thank you.

I wish I could provide you with some virtual cake.

Some hon. members: Oh, oh!

The Chair: Save it in the freezer, and maybe next time we'll get it. It will be like royal wedding cake: preserve it for the next time you come here.

Dr. Patrick Smith: There you go. It's a deal.

The Chair: Thank you so much, sir.

The meeting is adjourned.

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